it was not used, on the facts in this case, for the commission of any offence. With this submission I agree. The offence here was the putting of the complainant in fear in order for the committing of extortion, and the car was used merely to collect ransom money. The learned Deputy Public Prosecutor also agreed and did not support the confiscation.

The learned President pointed out that the evidence in this case is entirely circumstantial and he said in effect that there is a complete chain of circumstantial evidence which links the accused beyond reasonable doubt with the letter exhibit P3 and establishes the offence charged. The learned President had the opportunity of seeing the witnesses and I am not prepared to disagree with him or with the inferences that he has drawn from the evidence led by the prosecution. He has given adequate reasons why he considers that the evidence given by the accused is not consistent with the truth and why he has rejected it. In addition to the factors considered by the learned President, the accused has said that he was very friendly with the complainant, and that he had taken her to hotels and other places. The letter P3 indicates a knowledge that the complainant could not read Chinese characters well. It says that the letter could be shown to her eldest daughter. It does not specifically say for what purpose. It must be for the purpose that the daughter could explain it to her. Secondly, the accused has said that the complainant has thrown him over and is now going to hotels and other places with someone else, so there is also the motive of revenge for slighted love to be considered. In my opinion the conviction of the accused was justified on the evidence before the President.

The seventh ground of appeal was against sentence. The accused was sentenced to three years' imprisonment. There is no evidence that he has been convicted of any previous offence, therefore he must be considered to be a first offender. All the learned President has to say about sentence is:—

"I am satisfied that the sentence of 3 years' imprisonment is proper and in no way excessive bearing in the mind public interest and the difficulty in detecting crimes of this nature which are on the increase during the first half of this year. A deterrent is indeed necessary."

This is really a most despicable offence and if the accused for his own gain plays with fire he must expect to be burnt. But the record should show that the learned President has taken into consideration all the factors before passing sentence. He should have considered the age of the accused, that is to say 43 years, the fact that he had not been previously convicted, the fact that he was not proved to have had anything to do with the kidnapping of the boy, the fact that the motive for the letter was slighted love and/or financial gain and any other relevant factor including the ones mentioned by the learned President. He does not appear to have done so. I am not surprised at the sentence. The accused was playing on the feelings of a Chinese widow who had lost her only son, but he should have also considered the matters set out above. Had he done so, I think he would agree that the sentence is excessive.

The appeal against conviction is dismissed. The sentence of three years' imprisonment is reduced to one of eighteen months, and the order of confiscation of the Mercedes Motor Car SR 6959 if made, as it does not appear either in the judgment of the learned President or on the face of Court Form 114, is set aside and must be returned.

Appeal dismissed. Sentence reduced.

GAN KIM BOON v. CHUA BOON LOW

[A.C.J. (Ismail Khan J.) January 17, 1962]

[Seremban — Civil Appeal No. 9 of 1961]

Employment Ordinance, 1955, ss.16 and 18 — Contract of service between rubber tapper and tapping contractor — Tapper paid at "piece rates" — Hospitalisation whether reasonable excuse for being absent from work — Wrongful dismissal — Whether respondent a monthly paid employee.

The appellant, a tapping contractor employed the respondent who was a rubber tapper in November 1960. The respondent was paid at "piece rates" — his wages being paid before the 7th of each month and his average monthly earning covering up to $80. The respondent was at liberty under his terms of service to seek other employment on the estate after 2 p.m. when his work for the day ended. On March 3, 1961 the respondent was hospitalised for a foot injury — he being only certified fit to work on the April 4, 1961. On April 2, 1961 the respondent saw the appellant and informed him that he would resume work on the April 4, 1961 whereupon he was informed that his services would not be required. He was not paid a month's wages. The respondent commenced proceedings with a complaint before the Junior Asst. Commissioner for Labour who held after an enquiry that there was wrongful dismissal and awarded the respondent one month's wages in lieu of notice. On appeal, it was contended for the appellant: (1) respondent was in breach of his contract because he had absented himself from work without leave; (2) the respondent had minimised his loss by getting other employment on the estate; (3) the Junior Asst. Commissioner for Labour erred in regarding the respondent as a monthly paid employee, when on his own admission, he was paid at "piece rates".

Held: (1) though the respondent was certainly absent from work for 3 weeks without leave, he was in hospital owing to the injury to his foot and therefore had reasonable excuse;

(2) the 2nd ground of appeal should be dismissed because there was no evidence that the respondent was offered any new job by the appellant or anyone else on his dismissal and that he was only doing work obtained by him before his dismissal for another employer which he was not precluded from undertaking by his contract of service;

(3) in view of section 18(1) of the Employment Ordinance, 1955 and the fact that the contract of service between the appellant and respondent did not specify any wage period, there is a statutory presumption that it is for a period of one month and it is not enough merely to show that the respondent was paid at "piece rates" to displace this presumption because that merely indictated the method by which his wages were to be calculated.

Cases referred to:—

(1) *Brace* v. *Calder & Ors.* [1895] 2 Q.B. 253.
(2) *Balakrishnan* v. *Paskoe's Ltd.* [1946] M.L.J. 111.

CIVIL APPEAL.

Wong Mun Yong for the appellant.

Respondent in person.

Cur. Adv. Vult.

Ismail Khan J.: This is an appeal against the decision of the Junior Assistant Commissioner for Labour, Negri Sembilan, awarding a sum of $80 to the respondent being one month's wages in lieu of notice for wrongful dismissal.

The respondent commenced proceedings on 18th April, 1961, with a complaint before the Junior Assistant Commissioner for Labour who examined him on oath. His statement was recorded in a case book. Summons having been issued to the appellant, he attended the inquiry on 10th June, 1961, at which the respondent was also present. Except in respect of some matters which are not material, the facts are not in dispute. The respondent was employed by the appellant, a tapping contractor on an estate in Bahau, in November 1960 as a rubber tapper. He was paid at "piece rates" and received his wages on or before the 7th of each month and his average monthly earnings came to $80. Under his terms of service, he was at liberty when his work for the day ended, which was at 2 p.m., to seek other employment on the estate.

On 3rd March, 1961, owing to an injury to his foot, the respondent was admitted to the Kuala Pilah Hospital. He was certified fit to work only on 4th April, 1961. On 2nd April, 1961, he saw the appellant and informed him he would resume work on 4th April, 1961, but was told that his services would not be required any more. He was not paid a month's wages. At the conclusion of the inquiry the Junior Assistant Commissioner for Labour held that there was wrongful dismissal and made the above order.

There are a number of grounds of appeal most of which are of little substance. It was argued that the respondent was in breach of his contract of service because he had absented himself from work without leave. It is clear from section 15 of the Employment Ordinance, No. 38 of 1955, that a breach of his contract of service by a labourer can only arise when he is continuously absent from work for more than one day without leave and without reasonable excuse. The respondent was certainly absent from work for three weeks without leave but during that time, owing to the injury to his foot, he was in hospital and therefore had reasonable excuse. Again it was said that the respondent had broken his contract with the appellant by obtaining other employment on the estate in the afternoon. I do not think that the appellant can seriously press this point, in view of the appellant's own admission that the respondent was permitted to find employment after working hours.

The next point raised in this appeal is that the respondent had minimised his loss by getting other employment on the estate. Reference was made to the case of *Brace* v. *Calder & Ors.* [1] In that case the plaintiff was employed by the defendants, a partnership, as manager of their business for a certain period. Before the expiration of the period two of the partners retired and the business was transferred to and carried on by the remaining two partners. The continuing partners were prepared to have the plaintiff on the same terms for the remainder of the period but he declined their offer. The plaintiff sued for wrongful dismissal. It was held that though the dissolution of the partnership operated as a wrongful dismissal of the plaintiff, as the plaintiff had declined the offer to re-engage him on the same terms, he was only entitled to nominal damages. The above case has no application here. There is no evidence that the respondent was offered any new job by the appellant or anyone else on his dismissal. He was only doing work for another employer, work obtained before his dismissal and which he was not precluded from undertaking by his contract of service with the appellant.

I now come to the only ground of appeal which calls for serious consideration. It was contended by counsel for the appellant that the Junior Assistant Commissioner for Labour erred in regarding the respondent as a monthly paid employee when, on his own admission, he was paid at "piece rates". In my opinion, the Junior Assistant Commissioner for Labour was right in view of section 18(1) and (2) of the Employment Ordinance. Section 18(1) limits the wage period in a contract of service and under section 18(2), in the absence of any stipulation as to the wage period in a contract of service, it is to be deemed to be for one month. Under section 16(1) of the Ordinance, an employer has to provide labourers on an estate with suitable work up to an aggregate of twenty-four days in a month or paying wages up to an aggregate of twenty-four days. The contract of service between the appellant and the respondent does not specify any wage period. There is therefore a statutory presumption that it is for a period of one month and this presumption the appellant has to rebut. It is not enough to displace this presumption to show that the respondent was paid at "piece rates" as this merely indicates the method by which his wages were to be calculated. I find support for this view in the decision of Worley J. in the case of Extra Assistant Controller of Labour for and on behalf of *Balakrishnan* v. *Paskoe's Ltd.* [2] In that case the learned judge considered the effect of section 8(1), (3) and (4) of the Labour Ordinance, Straits Settlements (Cap. 69) which contained provisions similar, though not in identical language, to section 18(1) and (2) and section 16(1) of our Ordinance. There the plaintiff was engaged as a lorry driver on a daily wage: there were no specific terms of employment and there was evidence that labourers left or were dismissed without giving

or receiving notice, a practice which must have been known to the plaintiff. It was held, however, that there was a statutory presumption that the agreement was for one month and that the presumption was not displaced by the plaintiff's admission that he was engaged on a daily wage as that merely meant "that his wages were to be calculated at a daily rate."

The appeal is dismissed with costs.

Appeal dismissed.

Re HUP HING SHOE STORE
Ex parte CHANG KIM CHOON

[O. Bk. J. (Azmi J.) January 21, 1962]

[Ipoh — In Bankruptcy No. 37 of 1961]

Landlord and Tenant — Bankruptcy — Disclaimer of tenancy by Official Assignee — Bankruptcy Ordinance, 1959, s.59.

Where the Official Assignee has ceased to have any interest in premises occupied by a bankrupt and finds that the property will not produce a surplus beyond the value of the liability affecting it he may be able to disclaim it and so get rid of the property and the liability together.

It is the intention of the Bankruptcy Ordinance that the Official Assignee should not be compelled to acquire the bankrupt's property subject to such liabilities.

Cases referred to:—

(1) *Ex parte Walton* (1881) 17 Ch. D. 746, 751.

(2) *Reeves* v. *Davies* [1921] 2 K.B. 486.

The following cases are also cited in argument:

Ramasamy Pillai v. *Mayappa Chettiar* [1955] M.L.J. 105; *Meenachi Sundram* v. *Kunjan Pillai* [1955] M.L.J. 130; *Sutton* v. *Dorf* [1932] All E.R. Reprint 70; *Stafford* v. *Levy* [1946] 2 All E.R. 256.

BANKRUPTCY.

H. N. Dias for Assistant Official Assignee.

Lim Kean Chye for the landlords.

S. P. Seenivasagam for the bankrupt.

Cur. Adv. Vult.

Azmi J.: This is a motion by the Assistant Official Assignee for leave to disclaim under section 59 of the Bankruptcy Ordinance, 1959, the tenancy of premises at No. 16, Laxamana Road, Ipoh.

A receiving order was made against Hup Hing Shoe Store and adjudicating orders were made against Lee Yuen Heong (f) and Chew Khan, the partners of the said Hup Hing Shoe Store on the 4th September, 1961. The respondents are the trustees of the Estate of Lam Looking, deceased, who are the proprietors of the premises.

The said bankrupts carried on business at the said premises under the style of Hup Hing Shoe Store, and the premises are tenanted at a rental of $74 per month.

All the goods and effect of the said store were auctioned on the 26th July, 1961, and the said bankrupts ceased their business after the seizure of the property.

Chew Khan, one of the partners, had been living at the premises for several years and is still living there with his wife and the rent receipts issued by the landlords are in the name of Madam Lee Yuen Heong of Chop Hung Hing, and the bankrupts' property in the said premises have been disposed of by auction.

The Assistant Official Assignee now says that he does not require the said premises any further.

Chew Khan opposed this motion on the ground that it is against his interests and that he is the lawful surviving tenant of the premises and has a legal right to occupy them although the firm has ceased to carry on business. He said in paragraph 4 of his affidavit sworn on the 7th October, 1961, that he and Lee Yuen Heong's husband on behalf of the partnership paid an equal sum of $7,330 for acquiring the rights of tenancy at a total of $22,000. On the death of the said Lee Yuen Heong's husband she succeeded to the partnership and the rent receipts were in her name and Chop Hup Hing as statutory tenants. When the third partner retired from the partnership he was paid back the sum of $7,330. Since then Chew Khan and Lee Yuen Heong remained partners and continued to live in the premises for many years, she with her children and Chew Khan with his wife. In August, 1961, Lee Yuen Heong left the premises and surrendered her right of tenancy to Chew Khan, who now maintains that he is the lawful surviving tenant of the premises and that he has been paying the monthly rent of $76 to the landlord through his collector. But since the Assistant Official Assignee took over the rents were paid to the landlord through this officer. He now says that his wife undertakes to pay the future monthly rent on the premises on his behalf although he is believed to be seeking a new livelihood.

Mr. Seenivasagam said that the bankrupt is still living on the premises on a month to month tenancy and using it as his residence and submits that in such circumstances the tenancy is not a burden to the estate. On the other hand, if the court gives the order asked for the effect of that order will be to enable the landlord to get possession.

In the course of his address to me he asked me to correct Chew Khan's paragraph 4 of his affidavit by substituting the words "as the lawful tenant" for the words "statutory tenant."

It is now agreed that the tenancy held by the partnership was a contractual one. As I have said before, in this case the Assistant Official Assignee has ceased to have any interest in the premises and that if he continues to be in possession he will be liable for the payment of rent and to see that the bankrupt would keep to the terms of the tenancy. In my view, it is not to the interests of the creditors that the Assistant Official Assignee should continue to undertake to bear that burden. It is clearly the intention of the Ordinance that the Assistant Official Assignee